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**Administrative Release No. 1**

**Subject: Military Personnel and Civilian Spouses - Both Residents and Nonresidents of Maryland.**

**I. General**

This release relates to the application of Maryland income tax law to members of the United States armed forces stationed at military establishments located both within and outside of Maryland. It provides some specific filing instructions for such individuals.

**II. Law**

**A.** Generally, the Maryland income tax law applies to both residents and nonresidents of the State.

**B.** Military personnel who are permanent residents of Maryland do not lose their domicile if duty or assignments require their physical presence outside this State during the taxable year. Such individuals have a continuing obligation to file Maryland income tax returns which include all income no matter where earned or from whatever source, including military pay.

**C.** In administering Maryland income tax law, the Revenue Administration Division gives effect to the federal Service Members' Civil Relief Act.<sup>1</sup> Under this law, an individual who is domiciled in a state other than Maryland and who is transferred to Maryland for military duty is not subject to Maryland taxation on military pay. However, the law provides that the individual shall be taxed as a nonresident on that portion of federal adjusted gross income derived from tangible property, real or personal, permanently located in this State, income from a business, trade, profession or occupation carried on in this State, and income from Maryland lottery prizes.

**D.** A civilian spouse of an armed forces member is subject to the law either as a resident or as a nonresident of the State with respect to income from salary, wages or compensation received for services performed in this State. The civilian spouse may not claim, under the Maryland law, the benefits under the Service Members' Civil Relief

Act, but may be entitled to a credit on the home-state return for income subject to tax by both states. (See Maryland Form 502CR and instructions and Administrative Release No. 3). A civilian spouse who has resided within Maryland for less than 183 days of the taxable year is a nonresident of Maryland and is only taxable on that portion of federal adjusted gross income derived from tangible property, real or personal, permanently located in this State, income from a business, trade, profession or occupation carried on in this State and income from Maryland lottery prizes. A civilian spouse who has resided in this State for 183 days or more of the taxable year is taxable as a resident of Maryland on all income derived from sources both within and outside this State.

**III. Some Specific Filing Instructions for Military Personnel and Their Spouses**

**A.** Military personnel who are domiciled (legal residents) in Maryland.

Members of the military who are domiciled (legal residents) in the State of Maryland, regardless of where they are stationed, are required to file a resident tax return (Form 502) and report all taxable income received from whatever sources, including military pay.

**B.** Military personnel who are domiciled (legal residents) in a state other than Maryland.

Individuals who are members of the military stationed in Maryland but who are domiciled (legal residents) in another state should follow the guidelines below:

1. Single or Married and Spouse Has No Income.

a. If the individual's only income is derived from military pay, intangible personal property or income from sources outside Maryland, then no income tax return is required to be filed.

b. If the individual, in addition to military pay, has income derived from Maryland sources other than intangible personal property, a nonresident tax return (Form 505 and Form

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<sup>1</sup> Formerly the Soldiers' and Sailors' Civil Relief Act of 1940

505NR) must be filed. The individual must report total federal adjusted gross income, subtracting military pay on Form 505, then subtracting income from intangible personal property and other income derived from sources outside Maryland on Form 505NR. The individual may claim all personal exemptions and may either itemize deductions to the extent they are properly allocable to income taxable to Maryland or use the standard deduction. Personal exemptions and the standard deductions must be prorated based upon the ratio of Maryland adjusted gross income to federal adjusted gross income.

## 2. Married Military Personnel Having Spouses with Income.

a. Military personnel with an employed civilian spouse who resided in Maryland less than 183 days of the taxable year must file a joint, nonresident return (Form 505 and Form 505NR), if a joint federal return was filed. Total federal adjusted gross income should be reported, subtracting military pay on Form 505, then subtracting income from intangible personal property and other income from sources outside Maryland on Form 505NR. Itemized deductions may be claimed to the extent they are properly allocable to income taxable by Maryland, or the standard deduction may be used. Personal exemptions and the standard deductions must be prorated.

b. If the employed civilian spouse resided in Maryland for 183 days or more of the taxable year, files a joint federal return, and the nonresident military spouse has no non-military income from sources outside Maryland then:

(1) either a joint Maryland resident return, Form 502, may be filed; or

(2) separate returns may be filed.

c. If a joint return is filed, then the taxpayers must report total federal adjusted gross income and subtract the military pay, the military person's portion of income from intangible property, and other income from sources outside Maryland. Itemized deductions may be claimed to the extent that they were expended during the period of residence in Maryland and must be apportioned on the basis of the percentage of the civilian spouse's income to total income, or the standard deduction may be used.

d. If separate returns are filed, the military spouse must file a nonresident return (Form 505 and Form 505NR), using the married filing separate status. The resident spouse must file a resident return (Form 502), using the married filing separate status. Spouses must report their separate income, deductions and exemptions. Spouses may itemize only if they have itemized on the joint federal return.

The resident spouse may, unless the Comptroller requires or allows another method, claim the standard deduction or claim:

(1) Only the individual's federal itemized deductions, from among those deductions claimed on the federal return, as limited under Maryland law, that are attributable exclusively to the individual; and

(2) From among those federal itemized deductions of the individual not claimed under Subparagraph (1), a prorated amount of the itemized deductions in accordance with Subparagraph (3); or

(3) Claim a prorated amount of the itemized deductions claimed on the federal income tax return by using a fraction, the:

(a) Numerator of which is the individual's Maryland adjusted gross income; and

(b) Denominator of which is the husband's and wife's joint federal adjusted gross income.

e. For purposes of allocating itemized deductions under Paragraph d, "attributable exclusively" means that:

(1) The individual is solely responsible for the payment of an expense claimed as an itemized deduction, including compliance with a valid court order or separation agreement; or

(2) The individual jointly responsible for the payment of an expense claimed as an itemized deduction can demonstrate payment of the full amount of the itemized deduction with funds that are not attributable, in whole or in part, to the other jointly responsible individual.

Spouses filing separate federal returns must also file separate Maryland returns.

f. Chapter 3 of the Acts of 2007 (Special Session) provided for new graduated Maryland

income tax rates, and provided that for nonresident military personnel with Maryland source income, these rates are determined by the nonresident's total non-military income from all sources.

This requires special guidance for a nonresident military spouse with non-military income from both Maryland and non-Maryland sources who has a Maryland resident spouse and files a federal income tax return using a filing status of "married filing jointly." The nonresident should file a Maryland nonresident income tax return using a filing status of "married filing separately," and the resident spouse should file a Maryland resident income tax return using a filing status of "married filing separately," as described in Paragraph d above.

If the nonresident military spouse chooses to file a joint Maryland return with the resident spouse, a pro forma Maryland nonresident joint return must also be completed and submitted as an attachment to the Maryland resident return. The joint filing uses the total joint non-military income to determine the nonresident's tax rate, and the joint filing cannot be submitted electronically.

Specifically, the Maryland Form 505 is completed using the figures from the joint federal return for lines 1 through 31. On Maryland Form 505NR, the amount reported on line 5 should include the amount of the joint federal adjusted gross income that is attributable to the Maryland resident spouse. The total Maryland tax figure from line 32c of the Form 505 should be added to the figures on lines 30 and 35 of the Form 502, and that total should be entered on line 36 of the Form 502. The remainder of the Maryland Form 505, lines 33 through 55b should be left blank.

The Form 502 should be completed using the figures from the joint federal return. The amount of the joint federal adjusted gross income attributable to the nonresident spouse should be entered on line 13 of the Form 502.

#### **IV. Estimated Tax**

Military personnel and civilian spouses must file estimated tax returns if their estimated Maryland taxable income, not subject to withholding, results in a tax liability exceeding \$500.

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